IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2010 of 2003
WITH
CIVIL APPLICATION NO. 8637 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALPESHKUMAR PUSHPAVADAN VAIDYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2010 of 2003

MR AS SUPEHIA for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 1-2

MR HS MUNSHAW for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 25/10/2004

ORAL JUDGEMENT

At the joint request of the learned Counsel appearing for the parties, the petition is taken up for final hearing today, though by filing Civil Application No. 8637 of 2004, the petitioner had prayed for fixing an early date of hearing of the petition.

2. The facts which are not serious in dispute leading to the present petition are that the father of the petitioner who was serving as a Primary Teacher at Vadilpura, Tal. Padra died while in service on 22.6.1993. At the time of death of the petitioner's father, the petitioner was a minor. The petitioner attained majority on 10.3.1999. The petitioner shortly after achieving majority, applied for being granted compassionate appointment by his application dated 8.6.1999. The application of the petitioner however, came to be rejected by the respondents by order dated 31.7.2001, only on the ground that the application of the petitioner was beyond the period of limitation.

3. The petitioner has produced at Annexure "D" to the petition a Government Resolution dated 7.6.2000, in which the Government has reconsidered the question of limitation for applying for compassionate appointment, and has provided for different time limits for applying for compassionate appointment for the heirs of deceased having died during different time periods. According to item 3 of the said Government Resolution, for the Government servant who has expired between 1.12.1991 to 25.2.1997, the time limit for making application for appointment on compassionate ground would be two years from the date of death or in case of a minor child, within six months from the date of achieving majority. In the said Circular it is also provided that provisions of the G.R would be applied to the pending cases.

4. On the basis of the said Government Resolution it is contended by the learned Counsel for the petitioner that the petitioner's application for compassionate appointment could not have been rejected on the ground of delay. He has relied upon a decision of the learned Single Judge of this Court, dated 22.1.2003, passed in Special Civil Application No. 10585 of 2002, wherein also relying on the said Circular, the learned Single Judge had allowed the petition and set aside the order of the Government rejecting the prayer for compassionate appointment on the ground of delay.

5. The facts not being in dispute, it is not difficult to see that the case of the petitioner would be covered by the provisions of the said Government

Resolution dated 7.6.2000, and the petitioner would be entitled to the extended time limit provided therein and he would be entitled to make an application for compassionate appointment within six months of attaining majority. Since the application of the petitioner was pending on the date of issuance of the Government Resolution, the provisions therein would apply to his case as provided in the G.R itself. Indisputedly, since the petitioner had made such application within the period of six months of his attaining majority, the respondents erred in rejecting the application solely on the ground of delay. The impugned order dated 31.7.2001 therefore, cannot be sustained and the same is therefore, required to be quashed and set aside.

6. In the result, the petition is allowed. The impugned order dated 31.7.2001 is quashed and set aside. The respondents are directed to consider the case of the petitioner on merits treating his application for compassionate appointment as having been filed within time and dispose of the same in accordance with law, as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order. Rule is made absolute with no order as to costs. Direct service permitted.

7. In view of the order passed in the main matter, the Civil Application does not survive and the same stands disposed of accordingly.

(Akil Kureshi, J.)

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